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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL LEWIS SHARP III,

Defendant and Appellant.

F055984

(Super. Ct. Nos. MCR023294,  
MCR023518, MCR028052B)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Madera County. John W. DeGroot, Judge.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Carlos A. Martinez and Kari L. Ricci, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Ardaiz, P.J., Dawson, J. and Hill, J.

## **INTRODUCTION**

Michael Lewis Sharp, III, (Sharp) appeals from an order revoking his probation and sentencing him to prison for four years and four months, contending that the superior court abused its discretion in revoking his probation. Sharp also contends that the abstract of judgment incorrectly indicates his conduct credits. For the following reasons, we will order that the abstract of judgment be amended to reflect the proper conduct credits. In all other respects, the judgment is affirmed.

## **STATEMENT OF THE CASE**

On November 15, 2005, the Madera County District Attorney filed complaint No. MCR023294 in the Madera County Superior Court charging Sharp with, in count 1, possession of methamphetamine in violation of Health and Safety Code section 11377, subdivision (a)<sup>1</sup> and, in count 2, misdemeanor possession of an instrument used to inject or smoke a controlled substance in violation of section 11364, subdivision (a). On November 29, 2005, Sharp pled no contest to count 1, and the superior court granted the prosecution's motion to dismiss count 2. Sharp received a deferred entry of judgment and was required to enroll in and complete the Madera diversion program.

On December 13, 2005, the Madera County District Attorney filed complaint No. MCR023518 charging Sharp with, in count 1, possession of methamphetamine in violation of section 11377, subdivision (a) and, in count 2, misdemeanor possession of a hypodermic needle and syringe in violation of Business and Professions Code section 4140. On May 1, 2006, appellant pled no contest to count 1. The superior court also entered judgment against Sharp in the prior case (No. MC023294) and found him eligible for Proposition 36 treatment.

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<sup>1</sup> All further statutory references are to the Health and Safety Code, unless otherwise stated.

On May 30, 2006, the superior court granted Sharp three years probation in case No. MCR023294 on the condition that he serves 34 days in jail. In case No. MCR023518, the superior court granted Sharp three years probation on the condition that he serves five days in the county jail.

From October 2, 2006 through April 30, 2007, Sharp incurred three drug-related violations of probation.

On March 13, 2007, the Madera County District Attorney filed complaint No. MCR028052B, charging Sharp with, in count II, possession of methamphetamine in violation of section 11377, subdivision (a), and, in count III, misdemeanor possession of a hypodermic needle and syringe in violation of Business and Professions Code, section 4140. On April 30, 2007, Sharp pled no contest to count II, and the superior court dismissed count III.

On June 4, 2007, the superior court suspended imposition and execution of sentence for all three cases and granted Sharp five years probation on the condition, among others, that he serve 52 days in the county jail in case No. MCR028052B.

On May 19, 2008, the People filed a petition for revocation of probation, alleging that Sharp had been terminated from his drug treatment program and had failed to obey all laws as required by the conditions of his probation. On May 21, 2008, the People filed a first amended petition for revocation of probation, adding the allegation that Sharp had tested positive for methamphetamine on May 19, 2008. On June 30, 2008, the superior court found Sharp in violation of probation for failing to obey all laws and failing to comply with his drug treatment program. The superior court did not sustain the third allegation.

On July 28, 2008, the superior court revoked Sharp's probation and sentenced him to four years and four months in state prison as follows: for count II in case No. MCR028052B, the aggravated term of three years; for count I in case No. MCR023294, eight months or one-third the middle term; and, for count 1 in case No. MCR023518,

eight months or one-third the middle term. On August 27, 2008, Sharp timely filed a notice of appeal.

## **FACTS<sup>2</sup>**

### **Case No. MCR023294:**

On November 14, 2005, a Madera police officer responded to a call regarding a suspicious subject. The officer approached appellant, who was seated inside his Ford truck. Appellant asked the officer if he could see cracks in the building and stated that the building was leaking water and was going to collapse. The officer obtained consent to perform a safety check for weapons. The officer asked appellant if he had any needles on his person. Appellant revealed that he had a hypodermic needle for diabetes, which the officer found in appellant's right front pocket. Appellant did not, however, have any insulin on his person. Appellant admitted that he did not have a prescription for hypodermic needles for insulin use. The officer also found a plastic bag of methamphetamine in appellant's left front pocket.

### **Case No. MCR023518:**

On December 9, 2005, a Madera police officer responded to a call at a hotel regarding a customer who was acting strangely. The officer contacted appellant in his room, and appellant allowed him to enter. Appellant was paranoid, appeared to be talking to invisible people, and admitted that he had used methamphetamine a couple of days ago. Appellant consented to a search of his jacket, and the officer found a hypodermic needle. The officer arrested appellant after he admitted that he was not a diabetic. The jail later found a torn corner of a plastic bag containing methamphetamine in appellant's possession.

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<sup>2</sup> In light of appellant's no contest pleas, the facts are from appellant's probation reports and the revocation of probation hearing.

**Case No. MCR028052B:**

On March 10, 2007, a Madera police officer initiated a traffic stop of a vehicle in which appellant was a passenger. Appellant denied possessing any illegal items and consented to a search of his person. The officer located a small plastic baggie in appellant's pants pocket, which contained 0.1 grams of methamphetamine. Police arrested appellant, and he later admitted that he had been looking to purchase methamphetamine.

**Revocation of Probation Hearing:**

On April 15, 2008, Modesto police officers conducting a "smurfing" operation observed appellant purchase pills containing pseudoephedrine at three different drug stores and watched appellant give those pills to his companion, named Lopez. After appellant and Lopez left the third drug store, police arrested them and searched them. Officers found several pills containing pseudoephedrine in Lopez's possession, which had a value of approximately \$1,000 to \$1,500. An officer spoke with appellant, who admitted that he had bought the pills for Lopez because he would get \$10 to \$20 per box for them. On April 19, 2008, appellant was terminated from his drug rehabilitation program because of his arrest.

**DISCUSSION**

**A. Revocation of Probation**

"A court may revoke probation 'if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation ....' [Citation.]" (*People v. Galvan* (2007) 155 Cal.App.4th 978, 981) "[T]he facts supporting revocation of probation may be proven by a preponderance of the evidence." (*People v. Rodriguez* (1990) 51 Cal.3d 437, 439.) "However, the evidence must support a conclusion the probationer's conduct constituted a willful violation of the terms and conditions of probation." (*People v. Galvan, supra*, 155 Cal.App.4th at p. 982.) An appellate court

will overrule the trial court's decision to revoke probation only upon a showing of an abuse of discretion. (*Ibid.*)

Here, appellant contends that the trial court abused its discretion in revoking his probation because he has no history of violent crime. Rather, according to appellant, his criminal history is that of a person struggling with drug addiction. Appellant also argues that, after a period of not complying with the conditions of his probation, he was finally beginning to perform successfully. However, at the revocation of probation hearing, the superior court concluded "the defendant has reached the end of local rehabilitation. We've tried everything with Mr. Sharp and nothing has worked, therefore, the only alternative is to impose the prison sentence that was previously stayed."

The record in this case shows, by a preponderance of the evidence, that appellant has willfully violated the terms and conditions of his probation. Appellant admitted to three drug-related violations of his probation from October 2, 2006 through April 30, 2007. Most recently, appellant violated a term of his probation when he was terminated from his drug treatment program because he was arrested for purchasing pseudoephedrine pills, which he sold to a companion and which could be used to create methamphetamine. On this record, there was no abuse of discretion in revoking probation.

#### B. Abstract of Judgment

Appellant contends that the abstract of judgment incorrectly categorized some of his conduct credits as being pursuant to Penal Code section 2933.1, instead of being pursuant to Penal Code section 4019. The People agree. Thus, we will order that the abstract of judgment be corrected to properly reflect that the conduct credits for case No. MCR028052B be calculated in accordance with Penal Code section 4019.

#### **DISPOSITION**

It is ordered that the abstract of judgment be amended to ensure that conduct credits for count 1A (case number MCR028052B) are calculated under Penal Code

section 4019. The corrected abstract of judgment shall be sent to the Department of Corrections. The judgment is affirmed in all other respects.